

Honorable Robert S. Lasnik

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

ZAMBEZIA FILM LTD,
Plaintiff
v.
JOHN DOES 1- 57
Defendants.

Case No. 2:13-cv-00318

FIRST AMENDED ANSWER
AND COUNTERCLAIM

Jury Demanded

Defendant **Susan Vandee** ("Ms. Vandee") hereby responds to Plaintiff Zambezia Film Ltd., ("Zambezia")'s Complaint. Defendant Ms. Vandee is identified in Plaintiff's Complaint by I.P. Address **174.61.254.183**. In answer to the complaint, Ms. Vandee states as follows:

Jurisdiction And Venue

1. Admitted that this is an action which purports to recite a claim for copyright infringement and contributory copyright infringement. Denied that the action has merit.

2. Admitted.

3. Defendant admits only that this Court has personal jurisdiction. All other allegations are denied.

JOINDER

1
2 4. Defendant denies any involvement in any act related to, or even any
3 knowledge of, the “Motion Picture.” Defendant is without knowledge or
4 information sufficient to form a belief as to the truth of the remaining allegations
5 of this paragraph and therefore denies those allegations.

6 5. Defendant denies any involvement in any “swarm.” Defendant is
7 without knowledge or information sufficient to form a belief as to the truth of
8 the remaining allegations of Paragraph 5 and therefore denies those allegations.

9 6. Defendant denies any involvement in any “swarm.” Defendant is
10 without knowledge or information sufficient to form a belief as to the truth of
11 the remaining allegations of Paragraph 6 and therefore denies those allegations.

12 7. Defendant denies any involvement in any “swarm.” Defendant is
13 without knowledge or information sufficient to form a belief as to the truth of
14 the remaining allegations of Paragraph 7 and therefore denies those allegations.

15 8. Defendant is without knowledge or information sufficient to form a
16 belief as to the truth of the allegations of Paragraph 8 and therefore denies those
17 allegations.

18 9. Defendant is without knowledge or information sufficient to form a
19 belief as to the truth of the allegations of Paragraph 9 and therefore denies those
20 allegations.

21 10. Defendant is without knowledge or information sufficient to form a
22 belief as to the truth of the allegations of Paragraph 10 and therefore denies
23 those allegations.
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1 11. Denied as to Ms. Vandee. Defendant is without knowledge or
2 information sufficient to form a belief as to the truth of the remaining allegations
3 of Paragraph 11 and therefore denies those allegations.

4 12. Defendant is without knowledge or information sufficient to form a
5 belief as to the truth of the allegations of Paragraph 12 and therefore denies
6 those allegations.

7 13. Defendant denies any participation in any infringement. Defendant
8 is without knowledge or information sufficient to form a belief as to the truth of
9 the allegations of Paragraph 13 and therefore denies those allegations.

10 14. Defendant denies any participation in any infringement. Defendant
11 is without knowledge or information sufficient to form a belief as to the truth of
12 the allegations of Paragraph 14 and therefore denies those allegations.

13 15. Defendant is without knowledge or information sufficient to form a
14 belief as to the truth of the allegations of Paragraph 15 and therefore denies
15 those allegations.

16 16. Defendant is without knowledge or information sufficient to form a
17 belief as to the truth of the allegations of Paragraph 16 and therefore denies
18 those allegations.

19 17. Defendant is without knowledge or information sufficient to form a
20 belief as to the truth of the allegations of Paragraph 17 and therefore denies
21 those allegations.

22 18. Defendant is without knowledge or information sufficient to form a
23 belief as to the truth of the allegations of Paragraph 18 and therefore denies
24 those allegations.

PARTIES

19. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 19 and therefore denies those allegations.

20. Denied that Ms. Vandee participated in any swarm. Denied that the National Security Agency developed the “hashing” algorithm; Hans Luhn is generally credited with creating the concept of a hashing algorithm while he was a computer scientist at IBM. Defendant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 20 and therefore denies those allegations.

21. Denied.

22. Denied that Ms. Vandee participated in any infringement. Defendant is without knowledge or information sufficient to form a belief as to the truth of the remaining allegations of Paragraph 22 and therefore denies those allegations.

23. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 23 and therefore denies those allegations.

24. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 24 and therefore denies those allegations.

25. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 25 and therefore denies those allegations.

COPYRIGHT INFRINGEMENT AND BITTORRENT

33. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 33 and therefore denies those allegations.

34. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 34 and therefore denies those allegations.

35. Denied that Ms. Vandee visited any such “torrent site.” Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 35 and therefore denies those allegations.

36. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 36 and therefore denies those allegations.

37. Denied that the National Security Agency developed the concept of a hashing algorithm. Denied that a hash value acts as a “roadmap” to anything, least of all IP addresses. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 37 and therefore denies those allegations.

38. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 38 and therefore denies those allegations.

39. Denied.

40. Defendant is without knowledge or information sufficient to form a belief as to the truth of the allegations of Paragraph 40 and therefore denies those allegations.

1 41. Defendant is without knowledge or information sufficient to form a
2 belief as to the truth of the allegations of Paragraph 41 and therefore denies
3 those allegations. The phrase “in this is Hash” is not understood, and therefore
4 denied.

5 42. Denied that Ms. Vandee participated in any swarm. Defendant is
6 without knowledge or information sufficient to form a belief as to the truth of
7 the remaining allegations of Paragraph 42 and therefore denies those allegations.
8

9 43. Defendant is without knowledge or information sufficient to form a
10 belief as to the truth of the allegations of Paragraph 43 and therefore denies
11 those allegations.

12 44. Denied that Ms. Vandee participated in any infringement.
13 Defendant is without knowledge or information sufficient to form a belief as to
14 the truth of the allegations of Paragraph 44 and therefore denies those
15 allegations.

16 45. Denied that Plaintiff identified Defendant publishing the Motion
17 Picture via BitTorrent or any other method. Defendant is without knowledge or
18 information sufficient to form a belief as to the truth of the remaining allegations
19 of Paragraph 45 and therefore denies those allegations.

20 46. Denied that Plaintiff created the Motion Picture. On information
21 and belief, Plaintiff has never created anything except lawsuits.
22

23 47. Defendant is without knowledge or information sufficient to form a
24 belief as to the truth of the allegations of Paragraph 47 and therefore denies
25 those allegations.

26 48. Denied that Ms. Vandee distributed the Motion Picture in any way,
27 least of all by BitTorrent. Defendant is without knowledge or information
28

1 sufficient to form a belief as to the truth of the remaining allegations of
2 Paragraph 48 and therefore denies those allegations.

3 49. Denied.

4 **Defendants Are Members Of BitTorrent Swarm**

5 50. Denied.

6 51. Denied.

7 52. Denied.

8 53. Denied.

9 54. Denied.

10 **COUNT I**

11 **DIRECT COPYRIGHT INFRINGEMENT**

12 55. Defendant repeats each denial of paragraphs 1-54 above as if set
13 forth fully here.

14 56. Denied that Ms. Vandee participated in any infringement.
15 Defendant is without knowledge or information sufficient to form a belief as to
16 the truth of the allegations of Paragraph 56 and therefore denies those
17 allegations.
18

19 57. Defendant is without knowledge or information sufficient to form a
20 belief as to the truth of the allegations of Paragraph 57 and therefore denies
21 those allegations.
22

23 58. Denied that Ms. Vandee participated in any infringement.
24 Defendant is without knowledge or information sufficient to form a belief as to
25 the truth of the remaining allegations of Paragraph 58 and therefore denies those
26 allegations.
27

1 59. Denied that Ms. Vandee participated in any infringement.
2 Defendant is without knowledge or information sufficient to form a belief as to
3 the truth of the remaining allegations of Paragraph 59 and therefore denies those
4 allegations.

5 60. Denied.

6 61. Denied.

7
8 **COUNT II**

9 **CONTRIBUTORY COPYRIGHT INFRINGEMENT**

10 62. Defendant repeats each denial of paragraphs 1-61 above as if set
11 forth fully here.

12 63. Denied that Defendant contributed to any infringing conduct.
13 Defendant is without knowledge or information sufficient to form a belief as to
14 the truth of the remaining allegations of Paragraph 63 and therefore denies those
15 allegations.

16 64. Denied that Defendant contributed to any infringing conduct.
17 Defendant is without knowledge or information sufficient to form a belief as to
18 the truth of the remaining allegations of Paragraph 64 and therefore denies those
19 allegations.

20 65. Denied.

21 66. Denied.

22 67. Denied.

23 68. Denied.

24 69. Denied.

Prayer For Relief

Defendant denies that Plaintiff is entitled to any of the relief prayed for in the Complaint.

AFFIRMATIVE DEFENSES

Defendant asserts the following affirmative defenses without undertaking or otherwise shifting any applicable burden of proof.

Lack Of Standing

Plaintiff is not the real party in interest in this matter and/or does not have sufficient rights to maintain this action. Plaintiff's rights, if any, in the purported copyright fail to confer proper standing on Plaintiff to maintain this action.

No Infringement

Defendant has not engaged in or contributed to any infringement of the purported copyright.

Abuse Of Process

Plaintiff's claims are an abuse of process and are being pursued for an improper purpose.

Misuse Of Copyright

Plaintiff's claims are barred by the doctrine of misuse of copyright based on Plaintiff's improper conduct and actions in bringing and maintaining this and other actions exactly like it around the country.

Estoppel And Unclean Hands

Plaintiff's claims are barred by the doctrine of estoppel. Even though Defendant had no involvement in any direct or contributory infringement, Plaintiff likely knew the facts of any alleged file-sharing by other defendants or other non-defendants. Plaintiff acted in such manner that other defendants and/or third parties were entitled to, and did, believe that the continued

1 availability of the copyrighted work on BitTorrent was intended by Plaintiff, and
 2 any actions to download were induced by, and done in reliance on, Plaintiff's
 3 conduct.

4 **Implied License**

5 Plaintiff's claims are barred by implied license. By making its own
 6 copyrighted work available using the BitTorrent protocol to users of that
 7 protocol, Plaintiff has conveyed an implied license to the copyrighted work to
 8 any users of the BitTorrent protocol.

9 **Inadequacy Of Copyright Assignment**

10 Plaintiff's purported rights in the copyrighted work, if any, fail to include
 11 the right to sue for prior infringements.

12 **COUNTERCLAIMS**

13 For its Counterclaims against Plaintiff Zambezia, Defendant Ms. Vandee
 14 asserts as follows:

15 **THE PARTIES**

- 16 1. Defendant/Counterclaimant is an individual residing in this District.
- 17 2. Plaintiff/Counterclaim Defendant Zambezia is purportedly a **South**
 18 **African Company with a principal place of business in Cape Town, South**
 19 **Africa.**

20 **JURISDICTION AND VENUE**

- 21 3. This Court has subject matter jurisdiction over these counterclaims
 22 pursuant to 28 U.S.C. §§ 1331, 1338, 1367, 2201, and 2202. The counterclaims
 23 are so related to the claims asserted by Plaintiff in this action that they form part
 24 of the same case or controversy under Article III of the United States
 25 Constitution, and arise out of common facts, transactions, or occurrences as
 26 provided under Fed. R. Civ. P. 13 and 20.
 27
 28

5. Venue in this District is proper over the counterclaims pursuant to 28 U.S.C. § 1391.

5. Venue in this District is proper over the counterclaims pursuant to 28 U.S.C. § 1391.

GENERAL BACKGROUND

6. Plaintiff has brought this and other identical actions in countless other cases in this District as well as many other districts across the country. For example, Zambezia is the named plaintiff in the following cases filed in this District on the same day: *Zembezia Film (Pty.) Ltd. v. Does 1-47*, 2:13-cv-00307; *Zembezia Film (Pty.) Ltd. v. Does 1-66*, 2:13-cv-00308; *Zembezia Film (Pty) Ltd v. Does 1-66*, 2:13-cv-00309 ; *Zembezia Film (Pty.) Ltd. v. Does 1-66*, 2:13-cv-00310; *Zembezia Film (Pty.) Ltd. v. Does 1-66*, 2:13-cv-00311; *Zembezia Film (Pty.) Ltd. v. Does 1-70*, 2:13-cv-00312; *Zembezia Film (Pty) Ltd v. Does 1-48*, 2:13-cv-00313; *Zembezia Film (Pty.) Ltd. v. Does 1-58*, 2:13-cv-00314; *Zembezia Film (Pty) Ltd v. Does 1-51*, 2:13-cv-00315; *Zembezia Film (Pty) Ltd v. Does 1-51*, 2:13-cv-00316; *Zembezia Film (Pty) Ltd v. Does 1-18*, 2:13-cv-00317; *Zembezia Film (Pty) Ltd v. Does 1-57*, 2:13-cv-00318; and *Zembezia Film (Pty) Ltd v. Does 1-47*, 2:13-cv-00319. **None of those other matters were identified as related cases to this matter.**

7. Plaintiff alleges that it is in the business of making and producing films, yet there is no evidence that Plaintiff has, in fact, conducted any business other than filing copyright infringement lawsuits.

8. Plaintiff is one of at least five different plaintiffs which have all filed almost identical copyright infringement cases in this District using nearly identical pleadings (including the exact same typographical errors among the several cases). See, e.g., *Kintop Pictures v. Does 1-26*, 2:12-cv-02159; *R & D*

1 *Film 1, LLC v. Does 1-46*, 2:13-cv-00050; *Riding Films, Inc. v. Does 1-35*, 2:13-
 2 cv-00255; *Zembezia Film (Pty.) Ltd. v. Does 1-47*, 2:13-cv-00307; and *Voltage*
 3 *Pictures, LLC v. Does 1-18*, 2:13-cv-00455. All of the different plaintiffs use the
 4 same counsel as the instant action.

5 9. All five of those different plaintiffs have also brought similar
 6 actions in other cases around the country. See, e.g., *Kintop Pictures v. Does 1-*
 7 *78*, 12-cv-1210 (MDTN); *R&D Film 1 LLC v. Does 1-20*, 12-cv-5817 (NDIL);
 8 *Riding Films Inc. v. Does 1-61*, 13-cv-0018 (SDGA); *Zambezia Film Ltd v.*
 9 *Does 1-17*, 13-cv-0043 (EDTN); and *Voltage Pictures LLC v. Does 1-24*, 13-cv-
 10 0463 (NDOH), as well as countless others.

11 10. In each other district, the actions brought by those other plaintiffs
 12 are also brought by the same counsel. See, for example:

13 (a) In the Middle and Eastern Districts of Tennessee, Klint W. Alexander
 14 is counsel of record on: *Voltage Pictures LLC v. Does 1-92*, 13-cv-0132; *Kintop*
 15 *Pictures v. Does 1-78*, 12-cv-1210; *Riding Films Inc. v. Does 1-92*, 12-cv-1247;
 16 *R&D Film 1 LLC v. Does 1-96*, 13-cv-0617; and

17 (b) In the Southern District of Georgia, Nathan C. Belzer is counsel of
 18 record on: *Zambezia Film Ltd v. Does 1-33*, 13-cv-0016; *Riding Films Inc. v.*
 19 *Does 1-24*, 13-cv-0020; *R&D Film 1 LLC v. Does-1-37*, 12-cv-0283.

20 11. In none of the countless cases across the country brought on behalf
 21 of the instant Plaintiff, or any of the other plaintiffs, is any relationship between
 22 them ever disclosed to the various courts, despite the nearly-uniform
 23 requirement that every entity with a financial stake in the outcome of the
 24 litigation must be disclosed. See, L.C.R. 7.1.
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1 12. It is inconceivable that multiple completely unrelated entities all
2 happened to stumble upon the exact same set of plaintiff's lawyers in each of
3 countless different districts around the country.

4 13. On information and belief, Defendant Ms. Vandee alleges that
5 discovery will reveal a currently undisclosed entity is, in fact, the real party in
6 interest in this and other similar matters.

7
8 **FIRST COUNTERCLAIM**
9 **(Declaratory Judgment Of Non-Infringement)**

10 14. Defendant incorporates by reference all foregoing allegations made
11 in the affirmative defenses and counterclaims as if fully set forth herein.

12 15. There is an actual and justiciable controversy between the parties
13 regarding the alleged direct and contributory copyright infringement.

14 16. Defendant has not infringed Plaintiff's alleged copyright. Plaintiff
15 cannot knowingly claim otherwise.

16 17. Defendant is entitled to a declaratory judgment pursuant to 28
17 U.S.C. § 2201 that Defendant has not infringed, either directly or contributorily,
18 the purportedly-copyrighted work.

19 **PRAYER FOR RELIEF**

20 WHEREFORE, Defendant/Counterclaimant Ms. Vandee respectfully
21 requests that this Court issue judgment as follows:

22 A. That Zambezia take nothing by the Complaint and that the same be
23 dismissed with prejudice;

24 B. That Plaintiff has misused its copyright and that it should be
25 rendered unenforceable;
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1 C. That Defendant/Counterclaimant Ms. Vandee is not liable for
2 directly or indirectly infringing Plaintiff's copyright;

3 D. For an award of costs and reasonable attorneys fees incurred in
4 defending this action;

5 E. For an award of pre- and post-judgment interest; and

6 F. For such other and further relief as the Court deems appropriate.
7

8 **JURY DEMAND**

9 Defendant demands a trial by jury on all issues presented in the
10 Complaint and this Answer and Counterclaim.

11 Dated: May 9, 2013

12 Respectfully submitted,

13 /s/ John Whitaker

14 John Whitaker, WSBA No: 28868

15 WHITAKER LAW GROUP

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21 Attorney for Defendant
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CERTIFICATE OF SERVICE

I, Anne K. Smart, hereby certify that on the date indicated below, I caused a true and correct copy of the foregoing to be served on all parties who have appeared in this case:

DATED: May 9, 2013

s/Anne K. Smart
Anne K. Smart
Whitaker Law Group